

**From:** Chris Lee  
**To:** Microsoft ATR,American Atr  
**Date:** 11/7/01 9:49am  
**Subject:** MS SELL-OUT: STUPIDITY reigns in DoJ

[Text body exceeds maximum size of message body (8192 bytes). It has been converted to attachment.]

**CC:** ASKDOJ,president@whitehouse.gov@inetgw,vice.presid...

THANK GOD FOR THE "STATES" TO SAVE THE PEOPLE FROM THE SELL-OUT BY DoJ & GeoW!!! The questions arising from this so-called "settlement" is "Did GeoW and his DoJ political appointees receive something UNDER THE TABLE?" and "Should there be an investigation for possible CONFLICT OF INTEREST or FRAUD"?

THERE'S SOMETHING NOT RIGHT IN WASHINGTON!!!!

THANKS FOR NOTHING GeoW & cronies!!!

November 6, 2001 Breakaway states nix Microsoft pact Joe Wilcox, CNET

News.com WASHINGTON--Several states have refused to accept an agreement between the Justice Department and Microsoft, choosing instead to press further antitrust litigation against the software company.

The settlement agreement, to which nine of the co-plaintiff states have now given their support, remains essentially unchanged from the proposal put forward by the Justice Department and the software giant on Friday. Any changes would be only clarifications and not a substantive reworking, according to the government.

Connecticut Attorney General Richard Blumenthal, who did not sign onto the proposal, said that the settlement is a "triumph of hope over history," a deal that is "good but may not be good enough."

Many outside the case, from consumer groups to Microsoft competitors and antitrust specialists, have said that the deal goes easy\*\* on the software titan.

Said Blumenthal: "My present intention is to proceed in the litigation."

Tuesday's refusal, however, does not mean that those states will not come to terms with Microsoft at a later date.

"We in Iowa continue to look at the agreement. We move on with the litigation, (but) we are open to settlement talks," said Iowa's attorney general, Tom Miller, who also has not signed the deal. "We congratulate the states that settled."

Miller said that the case's mediation process "produced some real progress," especially regarding its disclosure of technical information on servers. Other concerns remain about the dictates for Microsoft, including safeguards for PC makers and openness to third-party applications.

The federal government brought suit against the software maker in 1998, and subsequent court decisions found Microsoft to be a monopolist that used its dominant position in operating systems to unfairly compete against other software makers and gain favorable deals with PC makers. A federal judge had ordered Microsoft split into two companies and the imposition of other strong remedies.

An appeals court in June threw out the breakup order, but in remanding the case to a lower court upheld the monopoly ruling and ordered that new remedies be set in keeping with that ruling.

U.S. District Court Judge Colleen Kollar-Kotelly, a relative newcomer to the case, was randomly assigned at the end of August. On several occasions since then, she has said that a settlement would be in the best interests of the country.

On Tuesday, the Justice Department expressed satisfaction with the recent progress toward a settlement and expects more states to sign on.

"We are very pleased with the results thus far," said Charles James, assistant U.S. attorney general. "This settlement is good for consumers and the tech economy."

The other states that have not signed onto the settlement proposal are California, Florida, Kansas, Massachusetts, Minnesota, Utah and West Virginia. Also in the group is the District of Columbia.

"We made every effort to reach a compromise to address the states' concerns and allow everyone to move

forward," Microsoft Chairman Bill Gates said in a statement Tuesday. "Yesterday, at the request of the states, we made some additional revisions to clarify the proposed decree and better capture the intent of the parties.

Earlier in the day, Microsoft indicated its willingness to keep working toward a settlement with the remaining states, even as it expressed a hope that the well-worked matter would be more or less closed Tuesday.

"Microsoft will never refuse to listen," said John Warden, an attorney for the company. "The issues in this case have been beaten to death...by people who have been worn out."

Going forward

The case now will proceed on two tracks. One track will involve public comment as dictated by the Tunney Act, and the other will be continued litigation with the states not agreeing to the settlement.

"I'm going to be going forward from this point on two parallel tracks," Kollar-Kotelly said.

Mediation among the parties ceased with Tuesday's hearing.

The Tunney Act requires that the judge would review the deal to ensure that it is in the public interest and is not politically motivated.

Before Kollar-Kotelly holds a hearing in keeping with that law, there must be a 60-day period of public comment after the proposed settlement is published in the Federal Register, which should take place within the next two weeks. After the public comment period, there will be 30 days for the government to respond, meaning that the next phase should conclude in February.

One observer said that the remaining states face an uphill battle in their continuing opposition to Microsoft, given the loss of their allies and worries about limited resources.

"The states can't lose any more, other than the enormous expense of continuing the battle," said Bob Lande, an antitrust professor at the University of Baltimore Law School. "With California, they have \$3.7 million assigned to their war chest. The question is, will that be enough?"

"We're very confident that there will be sufficient resources" to continue the process, said Connecticut's Blumenthal, who left the door open to settlement farther down the road.

Earlier in the day, the 18 state attorneys general were divided into three groups: One wanted to accept the settlement as it is, the second was undecided, and the third wanted to litigate. That split remained after several days of intense discussions that continued into the early hours on Tuesday.

"An extraordinary amount of work was done over the weekend," said Brendan Sullivan, the lead attorney for the states. "They negotiated until (12:30 PT) this morning, and a redline (amended) version was dispatched to the Justice Department and the remaining states at (5:30 PT) this morning."

Mediator Eric Green, a professor at Boston University, said that the states "worked through the night until the break of dawn this morning."

The states that have joined in the settlement are Illinois, Kentucky, Louisiana, Maryland, Michigan, New York, North Carolina, Ohio and Wisconsin.

The Justice Department and Microsoft delivered their settlement proposal, in the form of a consent decree, to Kollar-Kotelly last Friday to meet a court-ordered deadline. The states complained that they weren't given adequate input into the negotiations leading up to that settlement and that the proposal offers Microsoft too much wiggle room.

Microsoft's industry foes continued to find fault with the settlement Tuesday.

"The state attorneys general who today rejected the settlement agreement between Microsoft and the Department of Justice were right to do so, and we support them," Paul Cappuccio, AOL Time Warner's general counsel, said in statement. "That agreement fails to protect consumer choice and promote competition, by leaving Microsoft free to continue to abuse its monopoly."

**\*\*Rivals, others lament Microsoft deal**

By John G. Spooner, Stephen Shankland, and Joe Wilcox  
Staff, CNET News.com

November 2, 2001, 1:20 p.m. PT

<http://news.cnet.com/news/0-1003-200-7758623.html?tag=prntfr>

Consumer groups and Microsoft competitors reacted to Friday's proposed antitrust settlement with disappointment and skepticism.

The reaction to the deal reached by the software titan and the Justice Department in the landmark case boils down to one simple sentence: Microsoft got off easy.

"They seem to have done pretty well with the settlement with the DOJ," said James Love, director of the Consumer Project on Technology. The organization, formed by Ralph Nader in 1995, focuses on intellectual property rights, among other issues.

"We're disappointed," he said. "We would have expected to see more pop" in the settlement.

Earlier court decisions found Microsoft to be a monopolist that used its dominant position in operating systems to unfairly compete against other software makers and gain favorable deals with PC makers. A federal judge had ordered Microsoft split into two companies and the imposing of other strong remedies. An appeals court in June threw out the breakup order, but in remanding the case to a lower court upheld the monopoly ruling and ordered that new remedies be set in keeping with that ruling.

AOL, Sun dismayed

AOL Time Warner, which owns the Netscape Communications browser that was at the heart of the antitrust charges that surfaced in the mid-1990s, responded to the settlement deal with dismay.

"In its current form, today's proposed consent decree, like the one entered in 1994, does too little to promote competition and protect consumers, and can too easily be evaded by a determined monopolist like Microsoft," Paul T. Cappuccio, executive vice president and general counsel at AOL Time Warner, said in a statement.

The proposed settlement, he said, "fails to fulfill the promise of the unanimous decision from the U.S. Court of Appeals condemning Microsoft's extensive illegal conduct and requiring an effective remedy to prevent its reoccurrence."

AOL Time Warner's negative reaction to the settlement is not surprising. The company has sparred on numerous occasions with Microsoft and recently walked away from high-profile discussions to embed its America Online service in Windows XP. Its Netscape unit competed with Microsoft in the Web browser market and brought evidence of anti-competitive behavior to the attention of regulators.

Sun Microsystems lambasted the proposed settlement as "more narrow and less punitive" than the proposal rejected by the Department of Justice in March 2000 and said it merely "reinforces the status quo, and will do nothing to restore competition and innovation in the marketplace."

"Throughout the last century, the U.S. economy has profited greatly from sound antitrust enforcement," Sun Chief Executive Scott McNealy said in a statement. "Today's agreement signals a retreat by the federal government, and a defeat for consumers."

The proposed settlement, Sun said, is a blow to consumers and the technology industry and "a wholly inadequate response to Microsoft's major and continuing antitrust violations and to the two levels of Federal Court that found Microsoft guilty of violating U.S. antitrust law."

The other view: A "home run"

But not everyone is opposed to the settlement.

Dick Armey, majority leader of the U.S. House of Representatives, issued a statement calling the settlement a "home run for consumers" and urged the state attorneys general who are co-plaintiffs in the case to avoid dragging out the proceedings. The states have the ability to contest the settlement.

"Businesses should not be afraid that when they create popular products, they'll be saddled with endless litigation," Armey said.

Matthew Szulik, chief executive of Linux seller Red Hat, also took a contrarian tack, saying that Microsoft faces limitations on its behavior either through legal channels or in the unfettered marketplace. In the absence of a strong settlement, Microsoft's own behavior--for example, its increasing software prices--will help hasten its decline.

"By their own actions, they've put themselves in a bit of a trap," Szulik said. "I can't see them escaping this trap without damaging their long-term prospects."

Microsoft will be forced out of its proprietary ways regardless of the settlement, because companies' increasingly networked computer systems can only be built on open communication standards, he added. "In an enterprise environment, there will be requirement to interoperate with other forms of computing." Criticism of the settlement began to swell on Thursday as word of the impending deal leaked out. Trade groups opposing Microsoft's monopoly behavior distributed the last proposal prepared by U.S. District Judge Richard Posner before earlier settlement talks collapsed in April 2000.

The Computer & Communications Industry Association (CCIA) was one of the groups canvassing in Washington on Thursday using Posner's final settlement draft to attack the negotiations.

"This is a total capitulation," said CCIA President Ed Black. The government is "settling for something less than what they could have had a year and a half ago. Since then they succeeded in having Microsoft found to be a monopolist (and) they had a unanimous Court of Appeals ruling in their favor with very strong language."

CCIA is one of the groups expected to challenge the settlement as not being in the public interest.

Tying products together

The Software & Information Industry Association (SII) on Thursday also urged the Justice Department and the state attorneys general to reject the settlement.

Ken Wasch, the SIIA's president, said in a statement that the "settlement agreement, stunningly, will not change either Microsoft's business practices nor its software implementations one iota."

He added: "The purported settlement permits Microsoft to continue to technically tie the monopoly product of the Windows operating system to various middleware products, in direct contravention to the findings of fact affirmed unanimously by the Court of Appeals."

The settlement proposal does make some concessions regarding "middleware"--including Web browsers, e-mail clients, media players and instant-messaging applications. PC makers will have more freedom to offer such products from companies other than Microsoft, but a similar development over the summer resulted in few, if any, such offers.

The Windows operating system emerges largely untouched, and Windows XP will be free of any far-reaching restrictions.

The Progress & Freedom Foundation, a body that studies technology's effect on public policy, warned in a statement that the settlement does little to prevent Microsoft from "continuing monopolization."

President Jeffrey Eisenach said that, with the deal, the Justice Department "proposes to enter into a settlement that fails to meaningfully address any of the court's findings. It's an embarrassment for the Justice Department, a disservice to the law and an affront to the D.C. Circuit."

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